

ESTTA Tracking number: **ESTTA608674**

Filing date: **06/08/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Hampton Creek, Inc.
Granted to Date of previous extension	06/08/2014
Address	371 10th Street San Francisco, CA 94103 UNITED STATES
Party who filed Extension of time to oppose	Hampton Creek Foods, Inc.
Relationship to party who filed Extension of time to oppose	Hampton Creek, Inc. fka Hampton Creek Foods, Inc. Please refer to change of name/assignment document ID:TM306931

Attorney information	Chang B. Hong, Esq. 529 Championship Dr Harleysville, PA 19438 UNITED STATES chang@hamptoncreek.com Phone:610-937-5741
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Applicant Information

Application No	85724281	Publication date	12/10/2013
Opposition Filing Date	06/08/2014	Opposition Period Ends	06/08/2014
Applicant	Just Water, LLC c/o Hertz & Lichtenstein, LLP Beverly Hills, CA 90210 UNITED STATES		

Goods/Services Affected by Opposition

Class 029. First Use: 0 First Use In Commerce: 0

All goods and services in the class are opposed, namely: Antipasto, beverages consisting principally of milk, bottled fruits, butter, cheese, dairy-based dips, dairy-based spreads, dried fruits, eggs, fruit and soy based snack food, fruit spreads, fruit-based meal replacement bars, fruit-based organic food bars, jellies and jams, jerky, meat, milk, olive oil, pate, peanut butter, pickles, poultry, prepared nuts, seafood (not live), shakes, sliced meat, snack dips, soups, tofu, vegetable chips, yogurt-based beverages

Applicant Information

Application No	85724282	Publication date	12/10/2013
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Opposition Filing Date	06/08/2014	Opposition Period Ends	
Applicant	Just Water, LLC c/o Hertz & Lichtenstein, LLP Beverly Hills, CA 90210 UNITED STATES		

Goods/Services Affected by Opposition

Class 030. First Use: 0 First Use In Commerce: 0

All goods and services in the class are opposed, namely: Bakery goods, beverages made of coffee, beverages made of tea, candy, cereal based snack food, chewing gum, coffee and tea, condiments, custards, food flavourings, food seasonings, frozen yogurt, grits, ice cream, marinades, mixes for bakery goods, noodles, oatmeal, pasta, puddings, salad dressings, sauce mixes, sauces, seasonings, snack cakes, snack foods, spices, toast

Applicant Information

Application No	85724284	Publication date	12/10/2013
Opposition Filing Date	06/08/2014	Opposition Period Ends	
Applicant	Just Water, LLC c/o Hertz & Lichtenstein, LLP Beverly Hills, CA 90210 UNITED STATES		

Goods/Services Affected by Opposition

Class 032. First Use: 0 First Use In Commerce: 0

All goods and services in the class are opposed, namely: Bottled water, energy drinks, fruit beverages, fruit juice, fruit-flavored beverages, herbal juices, lemonade, soft drinks, sports drinks, vegetable juice, vegetable-fruit juices

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
The mark is merely descriptive	Trademark Act section 2(e)(1)
Dilution	Trademark Act section 43(c)
Genericness	Trademark Act section 23

Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	86014519	Application Date	07/18/2013
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	JUST MAYO		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 029. First use: First Use: 0 First Use In Commerce: 0 Vegetable-based spreads Class 030. First use: First Use: 0 First Use In Commerce: 0 Egg- and dairy-free mayonnaise; Salad dressing

Attachments	86014519#TMSN.jpeg(bytes) JUST WATER LLC Opposition.pdf(105567 bytes) Label-301079589.pdf(1482748 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by USPS Express Mail Post Office to Addressee on this date.

Signature	/Chang B. Hong/
Name	Chang B. Hong, Esq.
Date	06/08/2014

**IN THE UNITED STATES AND PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of trademark application Serial Nos. 85724281, 85724282 and 85724284

For the mark **JUST**, in the name of Just Water, LLC

Published in the Official Gazette on December 10, 2013

HAMPTON CREEK, INC.	}	
	}	
Opposer,	}	
	}	
v.	}	
	}	
JUST WATER, LLC	}	
	}	
Applicant.	}	
	}	
	}	
	}	

Opp. No. _____

NOTICE OF OPPOSITION

HAMPTON CREEK, INC. a Delaware corporation, having a place of business at 371 10th Street, San Francisco, CA 94103 (hereinafter “Opposer”) believes that it is or will be damaged by the issuance of a trademark registration based on Application Serial Nos. 85724281, 85724282 and 85724284, for the trademark JUST, and hereby opposes the same.

As grounds therefor, it is alleged that:

- 1) Opposer Hampton Creek, Inc. is a corporation organized and existing under the laws of the State of Delaware, located and doing business at 371 10th Street, San Francisco, CA 94103.
- 2) Opposer is a nationally known distributor of food products, including egg- and dairy-free mayonnaise.

- 3) Upon information and belief, the trademark JUST MAYO has been in continuous use in commerce in the United States for egg- and dairy-free mayonnaise since 2013.
- 4) Opposer is the owner of the entire right, title and interest in and to the trademark JUST MAYO for Vegetable-based spreads, Egg- and dairy-free mayonnaise; Salad dressing ("Opposer's Goods").
- 5) Opposer sells its egg- and dairy-free mayonnaise under the trademark JUST MAYO to consumers in many retail outlets.
- 6) Opposer has continuously used the trademark JUST MAYO in interstate commerce throughout the United States for the purpose of identifying Opposer's Goods and to distinguish those goods from the products of other manufacturers.
- 7) Ever since the adoption and use of the aforementioned trademark JUST MAYO, Opposer has widely and extensively supplied, distributed, marketed and sold Opposer's Goods, bearing the trademark JUST MAYO. As a consequence of same, the consuming public and trade have come to recognize and do recognize the trademark JUST MAYO as being used by Opposer, or by a single source, and associate and identify the trademark JUST MAYO with Opposer or with a single source, and Opposer derives substantial goodwill and value from the aforesaid identification by the consuming public trade.
- 8) By virtue of the continuous and extensive use of the trademark JUST MAYO, said mark has become and is a famous trademark with respect to egg- and dairy-free mayonnaise.
- 9) Opposer is the owner of the following U.S. Trademark application: JUST MAYO, Appl. No. 86014519 for "Vegetable-based spreads, Egg- and dairy-free mayonnaise; Salad dressing", filed July 18, 2013.
- 10) Print-outs of the application from the USPTO database are enclosed herewith.
- 11) Applicant, Just Water LLC, upon information and belief, is a Delaware corporation whose business address is c/o Hertz & Lichtenstein, LLP 450 N. Roxbury Drive, 8th Floor Beverly Hills, CA 90210.
- 12) On September 9, 2012, Applicant filed an ITU application to register the trademark JUST, Serial No. 85724281, for "Antipasto, beverages consisting

principally of milk, bottled fruits, butter, cheese, dairy-based dips, dairy-based spreads, dried fruits, eggs, fruit and soy based snack food, fruit spreads, fruit-based meal replacement bars, fruit-based organic food bars, jellies and jams, jerky, meat, milk, olive oil, pate, peanut butter, pickles, poultry, prepared nuts, seafood (not live), shakes, sliced meat, snack dips, soups, tofu, vegetable chips, yogurt-based beverages” in Class 29.

- 13) On September 9, 2012, Applicant filed an ITU application to register the trademark JUST, Serial No. 85724282, for “Bakery goods, beverages made of coffee, beverages made of tea, candy, cereal based snack food, chewing gum, coffee and tea, condiments, custards, food flavourings, food seasonings, frozen yogurt, grits, ice cream, marinades, mixes for bakery goods, noodles, oatmeal, pasta, puddings, salad dressings, sauce mixes, sauces, seasonings, snack cakes, snack foods, spices, toast” in Class 30.
- 14) On September 9, 2012, Applicant filed an ITU application to register the trademark JUST, Serial No. 85724284, for “Bottled water, energy drinks, fruit beverages, fruit juice, fruit-flavored beverages, herbal juices, lemonade, soft drinks, sports drinks, vegetable juice, vegetable-fruit juices” in Class 32.
- 15) The Applications for the Applicant’s marks were published for opposition in the Official Gazette on December 10, 2013. On January 8, 2014, the Opposer timely filed a request for a 90-day extension of time to oppose the Applications for Applicant’s marks, which was granted until April 9, 2014. On April 9, 2014, the Opposer timely filed a 60-day Request for Extension of Time to Oppose Applicant’s Mark Upon Consent, which was granted until June 8, 2014.
- 16) Upon information and belief, Applicant’s aforementioned ITU application Serial Nos. 85724281, 85724282, and 85724284 have not been used in commerce in the United States.
- 17) Opposer’s trademark JUST MAYO, and Applicant’s trademark JUST, are confusingly similar in appearance, sound and meaning, and create confusingly similar commercial impressions, and are therefore likely to cause confusion, to cause mistake or to deceive potential purchasers as to the source of Applicant’s products and/or likely to cause potential purchasers to mistakenly believe that

Applicant or Applicant's products are affiliated with, sponsored by or associated with Opposer or Opposer's products.

GROUND I – LIKELIHOOD OF CONFUSION

- 18) Opposer hereby incorporates by reference the allegations of Paragraph 1 through 17 hereof as if fully set forth herein.
- 19) Applicant's JUST mark is confusingly similar with Opposer's trademark JUST MAYO and is likely to cause confusion, to cause mistake and to deceive potential purchasers as to the source of Applicant's products, with consequent injury to Opposer, the public, and the trade, and/or to cause the mistaken belief that Applicant's JUST products originate with, are sponsored by and/or are affiliated with Opposer.
- 20) Opposer believes that it will be damaged if the trademark applications for JUST, Serial Nos. 85724281, 85724282, and 85724284, issue to registration because Applicant's trademark JUST is confusingly similar to Opposer's trademark JUST MAYO, and Applicant's aforesaid mark is or will be used on products that are the same as, similar to, or commercially related to the products supplied and distributed by Opposer under the trademark JUST MAYO.

GROUND II – DILUTION OF THE FAMOUS JUST MAYO TRADEMARK

- 21) Opposer hereby incorporates by reference the allegations of Paragraph 1 through 20 hereof as if fully set forth herein.
- 22) Because of the high degree of distinctiveness of the trademark JUST MAYO, the length of time and extent to which Opposer, has used said mark, the vast publicity the trademark JUST MAYO has received, the nationwide trading area in which the trademark JUST MAYO is used, and the high degree of consumer recognition of the trademark JUST MAYO, the trademark JUST MAYO is and has become a famous trademark pursuant to 15 U.S.C. §1125 (c)(1).

- 23) Registration of Applicant's trademarks JUST, Serial Nos. 85724281, 85724282, and 85724284, for numerous food products, would lessen the capacity of Opposer's famous trademark JUST MAYO to identify and distinguish Opposer's products sold thereunder.
- 24) Opposer believes that it will be damaged if the trademark applications for JUST, Serial Nos. 85724281, 85724282, and 85724284, issue to registration, as Opposer's trademark JUST MAYO is a famous mark and the use of JUST by Applicant will and/or is likely to cause dilution of the distinctive quality of Opposer's famous trademark JUST MAYO and, as such, would cause dilution of the trademark JUST MAYO in violation of 15 U.S.C. §1052, as amended by the Trademark Amendments Act of 1999, Pub. L. 106-43, 113 Stat. 218 (the "Act"), and 15 U.S.C. §1125(c) and 1127.

GROUND III – JUST IS GENERIC

- 25) Opposer hereby incorporates by reference the allegations of Paragraph 1 through 24 hereof as if fully set forth herein.
- 26) The term "just" is defined as "exactly, precisely; by a very small margin; only simply; perhaps, possibly (*adv.*); having a basis in or conforming to fact or reason; faithful to an original; conforming to a standard of correctness (*adj.*)".
- 27) The term JUST is generic for the numerous food products as described by the Applicant in paragraphs 12, 13 and 14, and cannot function as a mark, and is not entitled to registration.
- 28) In attempting to register a confusingly similar mark with the USPTO, a third party could attempt to rely on the registration of JUST, a registration that should never have issued, to argue that the USPTO should also allow this third party's confusingly similar mark to issue over Opposer's aforementioned trademark JUST MAYO. As such, the issuance of the trademark JUST is likely to cause irreparable loss, injury and damage to Opposer's business, to the extensive goodwill as symbolized by its aforementioned trademarks, and/or Opposer's

ability to police and/or enforce its exclusive rights in and to its mark JUST MAYO.

GROUND IV – JUST IS DESCRIPTIVE WITHOUT SECONDARY MEANING

- 29) Opposer hereby incorporates by reference the allegations of Paragraph 1 through 28 hereof as if fully set forth herein.
- 30) Opposer asserts that Applicant's alleged mark JUST is merely descriptive as applied to food products, as described in paragraphs 12, 13 and 14.
- 31) The term "just" immediately describes a function, feature or characteristic Applicant's goods. Specifically, the term "just" immediately describes Applicant's goods as described in paragraphs 12, 13 and 14.
- 32) The term "just" as applied to foods as described in paragraphs 12, 13 and 14 has not acquired secondary meaning.
- 33) Because Applicant's alleged mark JUST is merely descriptive without any evidence of secondary meaning, it is not entitled to register on the Principal Register.
- 34) In attempting to register a confusingly similar mark with the USPTO, a third party could attempt to rely on the registration of JUST, a registration that should have never issued, to argue that the USPTO should also allow this third party's confusingly similar mark to issue over Opposer's aforementioned trademark JUST MAYO. As such, the issuance of the trademark JUST is likely to cause irreparable loss, injury and damage to Opposer's business, to the extensive goodwill as symbolized by its aforementioned trademarks, and/or Opposer's ability to police and/or enforce its exclusive rights in and to its mark JUST MAYO.

WHEREFORE, Opposer requests that this opposition against the trademark applications for JUST, Serial Nos. 85724281, 85724282 and 85724284 be sustained.

The fee required by Section 2.6(a)(17) is enclosed herewith.

Opposer hereby appoints Chang B. Hong, member of the Bar of the Commonwealth of Pennsylvania and the State of New Jersey, to act as attorney in the matter of the opposition identified above, to prosecute said opposition, to transact all business in the Patent and Trademark Office, and in the United States courts connected with the opposition, to sign its name to all papers which are hereinafter to be filed in connection therewith, and to receive all communications relating to the same.

Respectfully submitted,
Chang B. Hong, Esq.
Attorney for Opposer

BY: /Chang B. Hong/
Chang B. Hong, Esq.
529 Championship Dr.
Harleysville, PA 19438
Tel No. 610-937-5741

Dated: June 8, 2014

**IN THE UNITED STATES AND PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of trademark applications Serial Nos. 85724281, 85724282 and 85724284

For the mark **JUST**, in the name of Just Water, LLC

Published in the Official Gazette on December 10, 2013



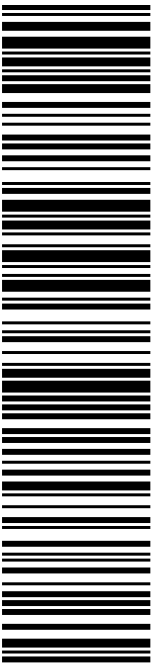
HAMPTON CREEK, INC.	}	
	}	
Opposer,	}	Opp. No. _____
	}	
v.	}	
	}	
JUST WATER, LLC	}	
Applicant.	}	
	}	
	}	

CERTIFICATE OF SERVICE



I hereby certify that a true and complete copy of the foregoing Notice of Opposition was served by mailing and said copy on June 8, 2014, via electronic mail on this 8th day of June, 2014 and express mail delivery postage prepaid, on 8th day of June, 2014, upon Applicant's attorney:

Jill Pietrini
Sheppard Mullin Richter & Hampton LLP
1901 Avenue of the Stars, Suite 1600
Los Angeles, CA 90067-6017
(310) 228-3700

BY: /Chang B. Hong/
Chang B. Hong, Esq.

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